

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUL 29 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

GENE M.,)	2 CA-JV 2010-0029
)	DEPARTMENT B
Appellant,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
ARIZONA DEPARTMENT OF ECONOMIC)	Appellate Procedure
SECURITY and MATTHEW M.,)	
)	
Appellees.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J19252400

Honorable Karen S. Adam, Judge Pro Tempore

AFFIRMED

Nuccio & Shirly, P.C.
By Salvatore Nuccio

Tucson
Attorneys for Appellant

Terry Goddard, Arizona Attorney General
By Claudia Acosta Collings

Tucson
Attorneys for Appellee Arizona
Department of Economic Security

V Á S Q U E Z, Presiding Judge.

¶1 The Arizona Department of Economic Security (ADES) filed a dependency petition in October 2009, alleging Matthew G., born in November 1995, was a dependent child as defined by A.R.S. § 8-201(13). At a contested dependency hearing, Gene denied the allegations of the petition, but submitted the matter to the juvenile court based on the exhibits ADES had introduced. The court found Matthew dependent as to both of his parents and this appeal followed. Gene challenges the sufficiency of the evidence, contending the adjudication was based solely on allegations that he had abused Matthew’s older sister. Gene argues there was no evidence he had abused Matthew and asserts that Matthew wishes to live with him. We affirm for the reasons stated below.

¶2 ADES alleged that Matthew was dependent because his mother could not protect him from his father, who recently had been arrested for sexually abusing Matthew’s nineteen-year-old sister. The petition further alleged Gene had admitted he had been sexually abusing his daughter for five years; the parents have a history of domestic violence; the mother knew about the sexual abuse, did nothing to prevent it, did not recognize the harm to the victim, intended to maintain her relationship with Gene, and therefore could not protect Matthew; and, at the time the petition was filed, Gene could not care for Matthew because he was incarcerated in connection with the charges relating to his daughter.

¶3 A dependent child is a child adjudicated to be “[i]n need of proper and effective parental care and control and . . . has no parent or guardian willing to exercise or capable of exercising such care and control,” or “[a] child whose home is unfit by reason

of abuse, neglect, cruelty or depravity by a parent.” A.R.S. § 8-201(13)(a)(i), (a)(iii). We review the juvenile court’s order adjudicating a child dependent for an abuse of discretion. *See In re Pima County Dependency Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987), and “will not disturb the . . . ruling . . . unless the findings upon which it is based are clearly erroneous and there is no reasonable evidence supporting them.” *In re Pima County Juv. Dependency Action No. 118537*, 185 Ariz. 77, 79, 912 P.2d 1306, 1308 (App. 1994). A preponderance of the evidence must establish a child is dependent before the court may so adjudicate the child. *See id.*; Ariz. R. P. Juv. Ct. 55(C).

¶4 In reviewing the juvenile court’s order, we review the evidence in the light most favorable to upholding the court’s ruling. *See In re Maricopa County Juv. Action No. JD-5312*, 178 Ariz. 372, 376, 873 P.2d 710, 714 (App. 1994). The exhibits admitted at the dependency hearing consisted of the report prepared by the Child Protective Services (CPS) investigator and the police report relating to the allegations that Gene had sexually abused Matthew’s sister. Based on the exhibits and brief argument by counsel, the court found at the end of the hearing that Matthew was dependent based on the definition of a dependent child in § 8-201(13)(A), which the court summarized. Gene contends, as he did at the hearing, that the evidence regarding the molestation of his sister did not establish Gene cannot safely parent Matthew. Gene also argued at the hearing and notes on appeal that Matthew wishes to be with his father and that Gene is the

primary caregiver. And, he makes much of the fact that he is willing to parent Matthew and has a right to parent his child.

¶5 Gene has not persuaded us that the juvenile court erred. At the hearing, ADES argued, relying on the exhibits, that the abuse of Matthew's sister "over a period of time . . . was serious. And the entire family got wrapped up in the dysfunction surrounding this abuse." ADES added that the CPS report reflects that

Matthew's views toward his mother and his family have been significantly impacted by all this. Additionally, with someone who has engaged in the alleged behavior that Matthew's sister indicates, you've got somebody who clearly doesn't have any sense of the normal kind of paternal boundaries that should exist within a family.

The CPS report reflects Matthew trusts his father but views his mother in an entirely negative light. He claims he was unaware that his father had touched his sister inappropriately and that his mother does nothing in the home; he admits his parents fight but places most of the blame for it on his mother. The CPS investigator concluded Gene is "controlling and abusive to [Mathew's] mother creating a hostile environment for Matthew."

¶6 The juvenile court agreed with ADES. In addition to noting the relevant language of the statute, the court stated at the hearing, "The incidents, which have been admitted and which I take to be true by a preponderance of the evidence, reflect, not only inappropriate care and control of a child, but make the home depraved by definition and this child, I believe, is at risk of inappropriate parenting." The exhibits establish the

severity of the abuse by Gene of his own daughter and his manipulation of her as well as the mother. And the record reflects that the court did consider how Gene's conduct reflected an inability to parent Matthew. The court's conclusion that ADES sustained its burden of establishing Matthew is dependent as to Gene is amply supported by the record.

¶7 We affirm the order adjudicating Matthew dependent.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge